

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATION BOARD
REGION 9

ARBOGAST BUICK, PONTIAC, GMC
TRUCK, INC. ^{1/}

Employer

and

Case 9-RC-17854

DISTRICT 34, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO ^{2/}

Petitioner

ACTING REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

I. INTRODUCTION

The Employer is engaged in the retail sale and servicing of new and used automobiles, RV's and watercraft at its facility located in Troy, Ohio. The Petitioner has filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's four body shop technicians, as well as the paintless/brushless technician, who all work in the Employer's body shop. The Employer, contrary to the Petitioner, contends that the only appropriate unit consists of its entire service department, which would include an additional body shop employee (the maintenance/washup/advisor ^{3/}), as well as 34 employees working in the parts and automotive service areas. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

A hearing officer of the Board held a hearing on the issue raised by the petition and the Employer and Petitioner filed briefs with me. I have carefully considered the evidence and the arguments presented by the parties on this issue. I have concluded that all six employees working in the body shop comprise a departmental or craft unit or otherwise constitute an appropriate unit, and that the unit found appropriate closely mirrors the unit sought by the Petitioner. Accordingly, I will direct an election in such unit.

^{1/} The Employer's name appears as amended at hearing.

^{2/} The Petitioner's name appears as amended at hearing.

^{3/} This individual is also referred to as the maintenance/wash-up employee.

To provide a context for my discussion of the issues raised by this case, I will first provide a general overview of the Employer's operations and employee classifications and the legal precedent relevant to the issues. I will then present, in detail, the facts and reasoning that supports my decision.

II. OVERVIEW OF OPERATIONS AND EMPLOYEE CLASSIFICATIONS

The Employer essentially operates an automobile dealership. It also sells RV's and apparently watercraft from a different building located in close proximity to the auto dealership; but this aspect of its business does not appear relevant to this proceeding. The auto sales, service, repair and parts aspects of the business are housed in a single building. Other than offices, this building is divided into areas dedicated to auto sales, parts, body shop and service write-up/auto service. The auto sales area of the building is referred to in the record as the "front end," with the remainder of the operation referred to as the "back end." The front end takes up one-third of the building and, in addition to a show room, contains various offices. The front end is run by a general manager and a sales manager.

Service Director William Sickler is the overall manager of the back end, or service department, which is further broken down into automotive service, parts, and body shop operations. Each of these areas is frequently described in the record in this matter as comprising a "department," although the formal designation of each area is somewhat unclear. A separate monthly financial statement is generated monthly for each such department.

The body shop manager is Dave Baumaster. The parts manager is Mike Wolfe. Sickler acts as the automotive service manager, but is assisted by Service Technician Foreman Kurt Hagen. Baumaster and Wolfe also report to Sickler. The parties agree and I find based on the record as a whole, that all of these individuals are supervisors within the meaning of the Act.

I will outline the operation of each area of the back end operations as the Employer has grouped them for supervision and accounting purposes.

(a) The Automotive Service Group

Working in the automotive service area are 15 service technicians (techs), a lube technician, three service advisors, a porter, a warranty clerk, a cashier, a file clerk, two used car detailers and a new car clean-up person. Except for those working in offices, the employees in this group work in a large open area which includes a service write-up area, into which customers may drive their vehicles, and an open bay area where vehicles are serviced. The service area has 13 auto lifts and a quick lube rack. I will describe each classification of employee in this group separately.

(i) Service Technicians

The 15 service techs perform both warranty repair work of General Motors vehicles and retail repair work on cars of all makes and models. They are basically what would be commonly referred to as mechanics. Some are trained in all areas of work performed in the auto service

area, some are trained only in specific functions. Although most of the service techs have General Motors (GM) or Automotive Service Excellence (ASE) certification, the Employer does not require that they have any certification. Their first line supervisor is Service Technician Foreman Kurt Hagen.

The hourly rate of pay among the service techs varies greatly – from a low of \$8 per hour to a high of \$20.50 per hour. Sickler determines the rate of pay for each individual based upon his evaluation of the work that they do. All but three of the service techs are paid on what is described as a “flat rate” system. This system is based upon a set amount of hours being estimated to complete a certain type of mechanical repair. The estimate is set forth in an industry manual or set by GM for a warranty repair. It appears to be an extremely rare occurrence that a service tech is ever consulted as to his opinion as to the amount of time a procedure might actually take. The service tech is then paid his hourly rate for the amount of time estimated for the task no matter how long it actually took to perform. This system appears to work to the service techs’ advantage since most average being paid for 47 to 49 hours per 40 hours actually worked. The three other service techs are paid only for hours actually worked.

(ii) Lube Technician

The lube technician utilizes the quick lube rack. The lube technician spends his entire day doing oil changes and tire rotations for customers, with a target of completing the process in a half hour or less. He performs no other work. It appears that his skills are relatively limited and he is recompensed at a straight \$8 per hour rate.

(iii) Service Advisors

The three service advisors take information from customers who bring in their cars for service. Once he learns the nature of the problem, the service advisor will generate the necessary paper work for the customer’s signature and then type a dispatch code for the work into the Employer’s computer system. The service advisor will also ascertain the estimated time and cost to complete the repair by primarily utilizing the industry standards noted above. The computer then dispatches the work to an available service technician who has the skills to do the job. The dispatch is picked up by the technician from a computer terminal in his work area. The service tech will input himself into the system as having begun the work and later input himself as having completed the work.

Service advisors are paid either \$450 or \$500 per week plus a monthly bonus. The bonus is calculated on a percentage of the labor sales generated. The average bonus for a service advisor is estimated to be \$1,200 a month.

(iv) Porter

The porter is described in the record as a “car jockey.” He shuttles vehicles being serviced throughout the day, including from one department or building to another. He also provides rides for both auto service and body shop customers. He earns \$7 per hour.

(v) Warranty Clerk

The warranty clerk administers the warranty claims; including the warranty submissions and calculation of claims for the service department and the body shop. The warranty clerk is paid \$10 per hour, plus a bonus based on receivables collected from GM for warranty repairs. Her monthly bonus averages approximately \$450.

(vi) Cashier

The cashier invoices the paperwork generated in connection with customer repairs by printing it off a printer in the cashier's office where she works. She separates the paperwork and hangs the keys up in preparation for the customer receiving their vehicle back. She will receive payment from the customer and deliver the key to the customer when they come in. She is paid a salary of \$350 per week.

(vii) File Clerk

The file clerk is responsible for retention of the paperwork generated in the auto service and body shop areas which has to be kept as a record of the repairs done for, depending upon the nature of the work, from 3 to 7 years. Essentially, she segregates the work orders and invoices according to the period of time a record of the particular work must be kept and then files it accordingly. She is paid \$7 per hour.

(viii) Used Car Detailers

The two used car detailers primarily “detail” used cars for the used car department. Detailing involves waxing and buffing a vehicle, shampooing the carpets and generally doing a thorough cleaning of the vehicle. They will occasionally be assigned to clean other customer cars, including on occasion those having been worked on in the body shop if the Employer is short of help. They are paid \$40 per car and \$65 per van detailed.

(ix) New Car Cleanup Employee

The new car cleanup employee cleans new cars when they come in from the delivery carrier before they are put on the lot. He cleans them again before they are released to customers after being sold. He will occasionally clean vehicles from other areas of the dealership. He is paid \$8.50 per hour.

(b) The Parts Group

The parts area is separated from the auto service area by a hallway and from the body shop by a hallway and a door. Employees working in parts are all overseen by Parts Manager Mike Wolfe, whose office is adjacent to the parts area. Working in the parts group are two parts counter employees, four parts drivers and two shipping and receiving employees. I will describe each classification of employee in this group separately.

(i) Parts Counter Persons

The two parts counter persons' job is to provide service technicians and body shop technicians parts that they request. This includes providing them with parts in stock, ordering parts or locating a part at another dealership and sending a parts driver to get it. A parts request is initiated by a technician entering the parts request in a computer terminal which is then read by a parts person on a terminal in his area. Parts counter employees are paid \$9.50 per hour plus a monthly bonus. The bonus is based on a percentage of the parts gross sales which are generated from the service department, the body shop, warranty sales and any outside sales that they may do. An average monthly bonus is \$1,000 to \$1,200.

(ii) Parts Drivers

The work of the four parts drivers is to pick up parts as noted above. They work only part time; averaging about 20 hours a week. They earn \$8 per hour.

(iii) Shipping and Receiving Employees

The two shipping and receiving employees stock parts that are received from either the manufacturer or another supplier. They are paid \$8 or \$9 per hour worked, plus a monthly bonus computed on a percentage of gross parts sales. Their bonuses average \$100 to \$500 per month.

(c) The Body Shop

The body shop area is completely separated from any other part of the facility – passage from other areas being through individual doorways. A vehicle cannot be brought to the body shop from any other area of the building. It must be driven around to the back side of the building and through an exterior door leading directly into the body shop area. The area contains a paint mixing room, a paint booth and a frame rack – utilized for straightening damaged frames. The remainder of the area consists of open bays where work is performed on damaged vehicles. Working in the body shop are four body shop techs, a paintless/brushless tech and a maintenance/washup/advisor. Their first line supervisor is Body Shop Manager Dave Baumaster.^{4/} Baumaster's office is in the body shop area and is not adjacent to any other office. I will describe each classification of employee in this group separately.

(i) Body Shop Technicians

The four body shop technicians, in general, do collision and paint repair work. The employees in this classification must know how to utilize the frame rack to straighten a frame or a damaged uni-body constructed vehicle. They must be able to straighten metal, utilize body filler and grinders to repair damage, smooth and sand repaired areas, replace parts, match paint to

^{4/} It appears that on occasion Baumaster might oversee some aspect of the work of a service technician performing work on a damaged vehicle that also requires mechanical repair, but there is no evidence that he has any statutory supervisory authority over them and they are not listed under him in the Employer's outline of its management hierarchy.

the existing color of the vehicle being worked on and spray paint areas which have been repaired. They own many of the tools required to perform their work – the cost of such tools is estimated to be \$5,000.

Although the Employer operates no formal apprenticeship program for body shop technicians to learn their trade, it appears that apprenticeship programs exist elsewhere and that trade schools also teach this skill. The Employer seeks the most experience body shop techs it can hire from what is described as a “close knit group” of employees possessing this skill in the area and requires that they have at least 5 years’ experience before being hired.

Although, as with the mechanics, the Employer does not require GM or ASE certification of the body shop techs, some of these individuals have such certification. Ongoing training is available for body shop techs and is encouraged, but not required, by the Employer. The training is available in one of three ways. One is through GM satellite transmissions to a television that allows for back and forth communication. Body shop techs sign up for a designated time and are paid for their time in such training. There is also training available on CDs, apparently through GM, and employees may view these CDs at work or at home. Finally, the Employer will pay for available training at the local community college.

All of the body shop techs earn \$14 per flat rate hour. Although Sickler sets their wage rate, unlike the service techs, he does not do so on an individual basis, but based upon his view of the prevailing wage rate of employees in the trade in his area. The estimated hours for work performed by the body shop employees apparently may not be gleaned from industry publications – assumedly due to the wide range of damage that a vehicle may suffer. Baumaster sets the flat rate time for a repair. This estimate of the flat rate time is decided upon in a variety of ways and may involve what an insurance adjuster’s estimates are and discussions with the body shop tech who is to perform the work. The body shop tech may also directly discuss what needs to be done with the adjuster. The system appears to work to the body shop tech’s advantage since it is estimated that although they only actually work 35 to 40 hours per week, they are on average paid for 70 flat rate hours. Thus, although service techs’ hourly rates, in general, exceed that of a body shop tech, a “good” body shop tech and a “good” mechanic earn approximately the same amount.

(ii) Paintless/Brushless Technician

The paintless/brushless tech performs paintless dent repair and brushless paint repair in one of the bays in the body shop. The paintless dent repair work involves repairing small to intermediate size dents in sheet metal using a variety of certain specialized tools in addition to utilizing standard body repair tools. The brushless paint repair involves sanding and buffing scratches out of paint or clear coat. Although described as “paintless,” it appears that painting is actually involved in the work.

The individual performing this work was promoted into the job from doing wash and clean up work in the body shop. To move into the position he was sent to a 3 or 4-day training course in Texas to learn how to utilize the tools and techniques involved in his work. He has progressed in his 5 years of work since that training to develop what he considers are his own

unique methods for performing his work. He also utilizes some airbrushing and paint matching skills learned in attaining an Associates Degree in Commercial Arts.

The paintless/brushless tech will also on occasion do traditional body work – although he is apparently less skilled than those individuals classified as body shop techs. The ability to perform such body work was gleaned from spending 5 years “working side by side” with experienced employees. He has acquired many of the same tools as the other body shop techs, including the same type of spray gun, pneumatic double action orbital sander, a variety of grinders, body hammers, sockets, socket drivers, punches and basic hand tools. ^{5/}

When performing traditional body work, the paintless/brushless tech is paid at the same rate as the other body shop techs. When he is not performing regular body shop work, he receives 50 percent of the revenue generated from his work. Although some of his revenue is generated by retail customers, an occasional referral from one of the service advisors who notices some minor vehicle damage and refers the owner to the body shop, and insurance work such as that resulting from hail damage, the majority of what the paintless/brushless tech earns is a result of an ongoing relationship that he has with the used car manager. Used cars are received on a daily basis as trade-ins or as cars purchased at auction. The paintless/brushless tech will inspect these cars and will note dings or scratches that need attention. He prepares a repair estimate for each car and discusses the estimate with the used car manager. The used car manager will decide which defects that he is willing to have fixed and they will discuss the price. Apparently payment is made internally to the body shop and the amount is computed in the paintless/brushless tech’s 50 percent cut of revenue he generates.

(iii) Maintenance/Washup/Advisor

The maintenance/washup/advisor removes damaged parts from the body shop bays, cleans the body shop, cleans the body shop cars, moves cars and empties trash in the service department. While his trash removal duties take him into the auto service area, it is estimated that he spends 6 to 7 hours a day in the body shop.

The maintenance/washup/advisor is described in the record as having to work closely with the body shop techs – as being in “constant contact all day long.” This is important because when a car is “papered off,” bonded, dusted and sanded in preparation to paint the vehicle, it has to be kept clean and moved out immediately. Moreover, with respect to the damaged parts that are on a car, he has to work closely with the body techs to know when to get the damaged parts out of the way so that new parts can be installed.

The maintenance/washup/advisor will prepare a repaired vehicle for pickup by the owner during which time he will ensure that there are no visible defects with the body work which has

^{5/} Sickler’s assertion that the paintless/brushless tech only owned tools with an estimated total value of \$100 is clearly incorrect. It appears that Sickler may not have a clear knowledge of the day-to-day activities of the body shop employees since he only spends perhaps 2 hours a week out on the floor in this area.

been performed, such as an over-spray of paint or some body part not fitting properly. If there is such a problem, he will notify the body shop tech. While these duties do not appear to require a great deal of skill, it is noteworthy that the maintenance/washup/advisor was the former assistant manager of the body shop area.

The maintenance/washup/advisor earns \$8.25 per actual hour worked. He also receives a bonus based on a percentage of the body shop's gross monthly profit. The bonus is intended to impress upon him the importance and interrelationship of the timeliness of his work with the earnings of the body shop department. It is estimated that his monthly bonus averages "a couple hundred dollars."

III. RELEVANT LEGAL STANDARDS

The Board's procedure for determining an appropriate unit under Section 9(b) of the Act is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *The Boeing Company*, 337 NLRB No. 24, slip op 2 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *Overnite Transportation Company*, 331 NLRB 662, 663 (2000); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, frequency of contact and interchange among employees, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289, 1290 (2000); *Esco Corp.*, 298 NLRB 837 (1990). The Petitioner's desire is a relevant consideration, but it is not determinative of the appropriateness of the unit. *Florida Casino Cruises, Inc.*, 322 NLRB 857, 858 (1997); *Airco, Inc.*, 273 NLRB 348 (1984).

In its brief, the Employer refers to what it describes as the "*Graneto Datson* rule"^{6/} in asserting that the Board has an established practice of finding all employees in an automotive service department to be a single appropriate unit. It also relies heavily upon *Gregory Chevrolet*, 258 NLRB 233 (1981) for the same proposition. In *Orson E. Coe Pontiac-GMC Truck, Inc. v. NLRB*, 230 F.3d 1359 (2000),^{7/} the Board acknowledged that certain of its pre-1986 cases would lend support to this proposition, but noted that such language was repudiated in *Dodge City of Wauwatosa, Inc.* 282 NLRB 459, fn. 6 (1986). In *Dodge City*, the Board stated that "unfortunately certain decisions have contained such general language" but that it was

^{6/} *Graneto Datson*, 203 NLRB 550 (1973).

^{7/} Unpublished decision found at 2000 WL 1359623.

“overbroad and not entirely accurate.” *Supra* at fn. 6. While the Board in *Dodge City* was dealing with a requested mechanics unit separate from other service department employees and thus limited its discussion to the appropriateness of mechanics units, it did not specifically limit its disavowal of the overly broad language found in such cases as cited by the Employer and did not indicate that a mechanics unit would constitute the only exception to a wall-to-wall service department unit.^{8/}

As noted above, in *Dodge City* mechanics were excluded from a unit of service department employees. This determination was essentially that they constituted an appropriate separate craft unit. See also, *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990). With regard to a consideration of whether the employees sought by the Petitioner in the instant case might constitute a functionally distinct craft department, the Board recently summarized the law in this area, as it applies to non-construction industry cases, in *Mirage Casino-Hotel*, 338 NLRB No. 64 (2002) as follows:

The Board has long held that a “craft unit” consists of a distinct and homogeneous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994). In determining whether a petitioned-for craft unit is appropriate the Board examines (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines; and (5) whether the petitioned-for employees share common interest with other employees. *Id.* However, in non-construction industry cases, the Board has not limited its inquiry solely to these factors. Instead, the Board will “determine the appropriateness of the craft unit sought in light of all

^{8/} The Employer cites *R.H. Peters Chevrolet, Inc.*, 303 NLRB 791 (1991) [mis-cited as 300 NLRB 120], as supporting its position that all classifications in a service department must be included for a unit to be found appropriate. The case does not lend support to any such assertion. *R.H. Peters* involved a post election challenged ballot proceeding. The issue concerned whether service advisors were included in a unit of service department employees which had been stipulated to by both the employer and petitioner. The Board concluded that it was impossible to ascertain the parties’ clear intent with regard to whether the service advisor’s position was to be included or excluded from the stipulated unit. The applicable standard in a situation where the intent of the parties to a stipulation is unclear is to include the classification of employee if they have a sufficient community of interest with the employees included in the unit. The Board did not articulate any preference for an overall unit and merely examined whether the advisors had a sufficient community of interest with other unit employees to be concluded. I view the Board’s failure to note any preference for an overall service department unit in this post-1986 case as lending support to the view that the *Graneto Datson* rule, if it ever existed, no longer does.

factors present in the case.” See, *E.I. du Pont & Co.*, 162 NLRB 413, 417 (1966).

With respect to the first element for consideration in a craft analysis -- whether the employee are formally trained or apprenticed -- the Board in *Mirage Casino-Hotel* noted that the absence of a formal apprenticeship/training program may be inconsequential if the employer only hires employees with significant experience. 338 NLRB at slip op 3 and 5 (a lack of formal training of the carpenters and upholsters found in *Mirage Casino-Hotel* to comprise a craft unit was offset by the employer generally requiring 2 to 4 years of relevant experience.) See also, *Wal-Mart Stores*, 328 NLRB 904, 907 (1999) (“That the Employer does not have a meat cutter apprenticeship program or other formal training in meatcutting is of little relevance here, as the meat cutters had prior experience when hired.”); *Anheuser-Busch, Inc.*, 170 NLRB 46 (1968) (finding craft status in absence of formal training program where electricians were hired with 3 to 4 years of experience.); *Diamond T. Utah, Inc.*, 124 NLRB 966 (1959) (no apprenticeship program for mechanics in craft unit, but employer hired experienced mechanics). Finally, it is not only those who possess true craft status who are appropriately included in a craft unit, but those acting as helpers or apprentices to such individuals. See, e.g., *Burns & Roe Services Corp.* 313 NLRB at 1309; *Diamond T. Utah, Inc.*, 124 NLRB at 966.

IV. ANALYSIS

In applying the appropriate legal standards to the facts of the case before me, I conclude that the employees sought by the Petitioner are craftsmen and that the division of the Employer’s service department in which these employees work may appropriately comprise a departmental craft unit. In this regard, although not specifically sought by the Petitioner to be included in the unit, I further concluded that the craft departmental unit must include the maintenance/washup/ advisor who appears to act to a large degree as a helper to the craftsmen in the unit. Moreover, were I to conclude that the individuals sought to be represented were not craftsmen, apprentices or helpers, I would still view the body shop employees as an appropriate unit for collective bargaining. My rationale in reaching these conclusions is set forth below and organized to comport with the analytical framework found in *Mirage Casino-Hotel*, 338 NLRB at slip. op. 4 and quoted above.

1. Whether the employees take part in formal training or apprenticeship program.

Although the Employer has no formal apprenticeship program to train new body shop techs, it hires only those with a minimum of 5 years experience. It then offers further satellite, CD or outside classroom training for them to remain current in their craft. Therefore this criteria is met.

With respect to the paintless/brushless tech, he was in fact sent for formal training by the Employer prior to beginning his primary work of paintless dent repair and brushless paint repair. Moreover, through his work with the other body shop employees he has now progressed into, on occasion, performing certain of the same body shop work as the body techs at their rate of pay

and has acquired many of the same tools as them. Therefore, it appears that he is progressing in skill and responsibility in much the same manner as any apprentice would.^{9/}

2. Whether the work is functionally integrated with the work of the excluded employees.

Contrary to Employer's contentions, the work of the body shop is not integrated to any great degree with the work of other employees. In this regard, if an auto needs the services of the body shop, it will be brought to the body shop area. The body shop is, for the most part, isolated from other operations and personnel at the facility. Body Shop Manager Baumaster is the individual who is primarily involved in generating an estimate of the work to be done and who assigns the work to a body shop tech. Sickler spends little time in the body shop area, and when he does, he spends much of the time consulting with Baumaster, rather than in the work area.

Although on rare occasions a body shop tech will go to the auto service area to use a lift, he is still working as a body shop tech and not in conjunction with a service tech. In any event, it is estimated that this occurs infrequently, only once or twice a year. On occasion a service tech will be called upon to evacuate the freon from an air conditioning system before the body shop tech can begin work on a damaged vehicle. It appears that the frequency of this varies from as much as three to four times a week to once every month or two. It appears that often a vehicle which has suffered damage may require both the attention of a service tech and a body shop tech, however, the work is billed on separate codes for each department and except on rare occasions performed separately in each department. In this regard, the body shop department billings has a separate analysis on the monthly financial statements – bolstering the view that the body shop is regarded to a great degree as a stand alone area. Moreover, in this regard, the monthly bonus due the maintenance/washup/advisor is based solely on the productivity of the body shop. While certain billing and parts services are handled by other aspects of the employer's operations, this does not appear to impact to any great degree on the work of the body shop employees. In effect, it appears that the employees in the body shop act, to a large degree, as if they worked in a stand alone operation. The extent of their integration into any of the other employer's operations is limited.

3. Whether the duties of the petitioned-for employees overlap with the duties of the excluded employees.

With the possible exception of the duties of the maintenance/washup/advisor, none of the duties of the body shop employees overlap the duties of employees in other areas. Thus, the record does not reflect any work performed by the body shop techs or the paintless/brushless tech which is also performed by anyone from the auto service area or vice-versa. While there appears to be an occasional coordination of work - such as freon evacuation mentioned above,

^{9/} Although the Employer asserts in its brief that the paintless/brushless technician is ineligible to take the continuing education offered by the Employer, this is not supported by the area of the transcript cited. Rather the transcript indicates that such training is available to all body shop employees.

the service tech who is a conversion van specialist removing certain parts of such a vehicle, and the alignment of the wheels of a vehicle which frame has been straightened by a body shop tech – the craft lines as to who performs a particular task remains intact. Moreover, further accentuating the unique skills of the body shop techs and the paintless/brushless tech, they never fill in for other classifications and employees from other areas do not fill in for them.

4. Whether the employer assigns work according to need rather than on craft or jurisdictional lines.

Again, with the possible exception of the maintenance/washup/advisor, there appears to be absolutely no work that is assigned between the body shop and the remainder of the service operations based upon the relative work load of each area. Rather, work appears clearly to be assigned to the body shop employees based on the expertise of these employees in their sphere of work.

5. Whether the petitioned-for employees share common interest with other employees.

In this regard, the body shop employees are separately supervised, have separate employee meetings conducted by Buamaster, utilize different tools, have different skills and have a pay structure different from other employees. With respect to the pay structure, the four body techs' hourly rate (and the paintless/brushless tech's when he is performing traditional body work), is apparently set by market forces rather than a personal evaluation of Sickler as to their relative skill. Thus, all employees performing traditional body shop work earn \$14 per hour as contrasted with the varying rates found within other classifications of employees. The body shop techs' actual earnings are further dependent upon the subjective estimates of Baumaster as to how long the work will take as opposed to the set industry standards of the service techs. Other than his hourly rate, which is different than any other classification of employee, the maintenance/washup/advisor's monthly earnings depend solely on the revenue generated by the body shop and thus is dictated by the efforts of his fellow body shop employees. Indeed, all employees in this department may impact their earnings by their efforts. No other area is completely staffed with employees whose earnings at least in part depend upon either their individual effort or the efforts of the entire department.

All employees working in the body shop had a background in body shop work prior to assuming their current positions rather than coming from some other area of the operations. Baumaster had been a body shop manager at another dealership. All the body techs apparently had at least 5 years in the trade. The paintless/brushless tech was promoted from a body shop position and the maintenance/washup/advisor was demoted from a body shop position.

The body shop employees are separately supervised by Baumaster who has the authority to hire, discipline and impact earnings.^{10/} On occasion, meetings are held by Baumaster for just

^{10/} It is unclear whether the ability to hire must be in conjunction with Sickler. Only Sickler may discharge an employee.

the body shop employees. There is no indication in the record that body shop employees are ever part of any larger employee group meetings.

Although body shop employees commonly utilize certain areas used by other employees (such as a lunch and restroom/locker room ¹¹/), share in the same benefits as other employees (such as vacations and holidays, uniforms, medical and dental insurance, and a 401(k) plan), and it appears that there may be certain undescribed work rules which pertain to all service department employees, such factors do not obliterate the clear common interests which exist between the body shop employees separate and apart from other employees. *Mirage Casino-Hotel*, 338 NLRB at slip op 3; *Burns & Roe*, 313 NLRB at 1309; *Dodge City*, 282 NLRB at 460.

Applying the above principles, I find that the body shop techs possess and exercise the skills of a craft; that the paintless/brushless tech, if not possessing the complete skills of the craft at least is functioning at the level of an apprentice in the department; that the assistance afforded by maintenance/washup/advisor to the department is akin to that of a helper in a departmental craft unit; and that the department enjoys a separate community of interest from other employees such that they, as employees in the body shop area, comprise the sort of homogenous departmental craft unit appropriate for collective bargaining.

As noted previously, it appears that a departmental craft unit must include all members of the department or area involved who directly assist and support the craftsmen involved. Therefore, although he was not specifically sought by the Petitioner, I will include the maintenance/washup/advisor in what I view as the smallest appropriate unit mirroring the Petitioner's requested unit.

In addition, even if the unique skills of the body shop employees were considered not to be those of craft employees, I would still view a unit limited to the body shop employees as appropriate. As previously noted, in determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, frequency of contact and interchange among employees, and similarities in wages, hours, benefits, and other terms and conditions of employment. Paralleling these criteria, I note that the body shop employees are only marginally integrated into the Employer's other operations. The body shop area is, generally, physically and fiscally separate and the other service operations could seemingly exist without its presence. The body shop has its own manager, the skills exercised in the body shop are for the most part unique, there is some contact but no interchange among employees, and all body shop employees wages are to some extent tied to the level of production generated in the body shop.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussions above, I conclude and find as follows:

¹¹/ It is unclear how often employees actually come into contact in these areas and such conjecture by the Employer in its brief that a body shop employee's locker may be next to a service techs is not specifically supported by the record.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time body shop employees, including the body shop technicians, the paintless/brushless technician and the maintenance/washup/advisor, employed by the Employer at its Troy, Ohio dealership; but excluding all other employees, the body shop manager and all guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by District 34, International Association of Machinists and Aerospace Workers, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **November 28, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 5, 2003**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 21st day of November 2003.

/s/ Earl L. Ledford, Acting Regional Director

Earl L. Ledford, Acting Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Classification Index

400-7500-0000-0000
420-2900-2933-0000
420-2900-2966-0000
440-1740-5000-0000
440-1760-9133-0500
440-1760-9133-2400
440-1760-9133-5700
440-1760-9133-7200
440-1760-9133-8600
440-1760-9133-9100